

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Andreas NANDY et al.

Examiner: ROONEY, NORA MAUREEN

Serial No.: 10/583,093

Group Art Unit: 1644

Filed: JUNE 15, 2006

Confirmation Number: 1555

**Title: DNA SEQUENCE, AND RECOMBINANT PREPARATION OF THE
GRASS POLLEN ALLERGEN LOL P4**

RESPONSE TO RESTRICTION REQUIREMENT

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to this Restriction Requirement mailed March 31, 2008, Applicants hereby elect, with traverse, Group II (claims 10-12), drawn to a Lol p 4 polypeptide encoded by SEQ ID NO: 1 or SEQ ID NO: 3.

In response to the election of species requirement, Applicants hereby elect, with traverse, the polypeptide encoded by SEQ ID NO: 1.

The requirement for restriction is respectfully traversed insofar as the Office Action has not demonstrated that an undue searching burden would be required to examine all groups and certainly not to examine at least more than one of the groups (for example, Groups II-III, which are *generically* directed to the molecules of the present invention and method(s) for the production thereof and/or use thereof). “If search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct invention.” (Emphasis added.) See, M.P.E.P. §803.

Regarding Group III, claim 13, which is directed to a process of using the product of elected Group II, reference is made to the decisions in In re Ochiai, 37 USPQ2d 1127 (Fed. Cir. 1995), and In re Brouwer, 37 USPQ2d 1663 (Fed. Cir. 1996). The Commissioner's comments thereon in 1184 TMOG 86, March 26, 1996, indicate that, where product and process claims in the same application have been restricted and the elected product claim has been found allowable, withdrawn process claims including the limitations of the allowed product claim will be rejoined into the application and fully examined in that same application. It is respectfully submitted that the process claims herein should be rejoined and fully examined at such time as the product claim is found allowable.

The requirement for election of species is traversed insofar as the Office Action has not demonstrated that it would constitute undue burden to examine more than one DNA sequence(s) which encode the claimed Lol p 4 polypeptide(s). To this end, Applicants cordially invite the Examiner to review the disclosure contained in the paragraph bridging pages 9 and 10 of the present specification and the disclosure contained in the sequence listing page.

Withdrawal of the restriction requirement, in its entirety, is earnestly solicited.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined.

The Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

/Richard J. Traverso/

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